

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 133 OF 2005  
IN  
NOTICE OF MOTION NO. 2391 OF 2004  
IN  
B.C.C.S.C. SUIT NO. 1582 OF 2004

Amarjit Malik .. Appellant  
V/s.  
Indian Body Building Federation & Ors. .. Respondents

Mr. B.M. Chatterjee i/b. M/s. V. Deshpande & Co. for the  
Appellant  
Mr. G.S. Godbole i/b. Mr. C.D. Patwardhan for the  
Respondents

CORAM : ABHAY S. OKA, J.  
DATED : 20TH APRIL, 2005

**P.C.:-**

1. Admit. Respondent Nos. 1 and 2 waive service. The learned counsel appearing for the Respondent Nos. 1 and 2 (original Plaintiffs) states that Plaintiffs are claiming injunction in Notice of Motion No. 2391 of 2004 only as against the Appellant (Original Defendant No. 3). In view of this statement, the learned counsel appearing for the Appellant prays for deleting the names of Respondent Nos. 4 to 7. Accordingly permission is granted to delete the names of the Respondent Nos. 4 to 7.

2. By consent of the parties, taken up for hearing forthwith. The challenge in this Appeal from Order is to the judgment and order dated 19.10.2004 passed by the learned Trial Judge on Notice of Motion for injunction taken out by the original Plaintiffs (Respondent Nos. 1 and 2 herein). The learned Trial Judge directed that

none of the parties to the Suit shall act on behalf of the Original Plaintiff No. 1 till the decision of the Suit. The learned Judge directed that the reins of the federation shall be handed over to the Court Receiver, who shall conduct the activities as are required under the rules and regulations. It must be noted here that the original Plaintiffs are also aggrieved by the said judgment and order and they have preferred Appeal from Order No. 984 of 2004, which is pending in this Court and which is on Board alongwith this Appeal from Order.

3. The learned counsel appearing for the Appellant submitted that the impugned judgment and order is cryptic and it does not record any specific finding of existence of a prima facie case. He pointed out that none of the documents and affidavits on record are even referred to and considered by the learned Trial Judge.

4. The learned counsel appearing for the Respondent Nos. 1 and 2 stated that the Respondent Nos. 1 and 2 are also aggrieved by the said order. He submitted that the relief granted by the Trial Judge travels beyond the scope of the prayers made in the notice of Motion.

5. I have considered the rival submissions. The notice of motion taken out by the Respondent Nos. 1 and 2 was for temporary injunction, praying for the following reliefs:-

(a) for a temporary injunction and order of this Hon'ble Court, pending the hearing and final disposal of the suit, restraining the Defendants,

(i) from posing themselves as Honorary Secretary, Treasurer, President, Executive Vice-President, Executive Vice-President and Vice-President respectively and/or those listed in Ex. "H" hereto as the office bearers of the Plaintiffs No. 1 Federation and/or from opening and/or operating any bank account in the name of the Plaintiffs No. 1 Federation including Bank Account no. SB/112798 with Abhyudaya Co-operative Bank Ltd. Kalachowki Branch and Bank Account No. SB/4049 with the Central Bank of India, Walkeshwar Branch in the name of the Plaintiffs No. 1 Federation;

(ii) holding any meeting and/or any competition of body building in the name of the Plaintiffs No.1 Federation and/or giving away any awards in the name of the Plaintiffs No. 1,

(iii) communicating and/or corresponding in the name of the Plaintiffs No. 1 Federation.

6. The relief prayed for was for temporary injunction. While considering the prayer for temporary injunction, the Trial Judge ought to have addressed himself to the following points:-

- (i) prima facie case,
- (ii) balance of convenience and
- (iii) irreparable injury.

However, the learned Judge, without dealing with any of the said points, has merely observed that the controversy involved in the Suit will have to be decided in the light of the evidence and therefore, he directed that the Court Receiver should conduct the activities of the Respondent No. 1 Federation.

7. In my view, the impugned judgment and order is wholly unsatisfactory. Even for considering prayer for interim relief, the learned Trial Judge has to record prima facie findings on merits of the matter as order of temporary injunction cannot be passed unless and until a prima facie case is made out. Considering the nature of the impugned order which is not serving interests of both the parties, the same deserved be set aside and the Trial Judge will have to consider the Motion afresh.

8. By order dated 12.11.2004, this Court directed that till 22.11.2004, the Court Receiver should not take charge. This Court recorded statement of the Advocate for the Respondent-Indian Body Building Federation (the Original Defendant No. 1) that no body building competition will be held till 22.11.2004. The said interim arrangement recorded in order dated 12.11.2004 has been extended from time to time and is in force till today. As I am directing the Trial Judge to decide the Notice of Motion expeditiously, the interim arrangement, which is recorded in order dated 12.11.2004 in Appeal from Order No. 984 of 2004 will continue to operate till the disposal of the Notice of Motion.

9. Hence, the following order:-

I. The impugned judgment and order dated 19.10.2004 is quashed and set aside and Notice of Motion No.

2391 of 2004 is restored to file.

II. The Trial Judge will decide the Notice of Motion afresh in the light of the observations made in this judgment.

III. The Notice of Motion shall be decided as expeditiously as possible and in any event on or before 1.7.2005.

IV. Till the final decision of the Notice of Motion, the interim arrangement which is recorded in order dated 12.11.2004 passed by this Court will continue to operate.

V. All the contentions of the parties on the merits of the Notice of Motion are kept expressly open.

VI. Appeal is partly allowed in above terms with no order as to costs.

10. Parties and the concerned Court to act on an authenticated copy of this order.

( JUDGE )